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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THE GILLETTE COMPANY

Appeal 2009-010017
Application 10/799,938
Technology Center 3700

Before RICHARD E. SCHAFER, JAMESON LEE, and
RICHARD TORCZON, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

A. STATEMENT OF THE CASE

This is a decision on appeal by the real party in interest, The Gillette Company (“Gillette”) under 35 U.S.C. § 134(a) from a rejection of claims 1-18 and 38-50. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

References Relied on by the Examiner

Apprille, Jr. et al. (“Apprille”)	5,249,361	Oct. 5, 1993
Andrews	6,145,201	Nov. 14, 2000
Rozenkranc	US 6,276,061 B1	Aug. 21, 2001
Richard et al. (“Richard”)	US 7,200,937 B2	Apr. 10, 2007
Gilder	US 2002/0000040 A1	Jan. 3, 2002
Simms	US 2002/0023351 A1	Feb. 28, 2002

The Rejections on Appeal

The Examiner rejected claims 1 and 38 under 35 U.S.C. § 102(b) as anticipated by Simms.

The Examiner rejected claims 1-8, 38-45, and 50 under 35 U.S.C. § 103(a) as unpatentable over Simms and Richard.

The Examiner rejected claims 9, 12-15, 46, and 47 under 35 U.S.C. § 103(a) as unpatentable over Simms, Richard, and Apprille.

The Examiner rejected claims 10 and 16 under 35 U.S.C. § 103(a) as unpatentable over Simms, Richard, Apprille, and Andrews.

The Examiner rejected claim 11 under 35 U.S.C. § 103(a) as unpatentable over Simms, Richard, Apprille, and Gilder.

The Examiner rejected claims 17, 18, 48, and 49 under 35 U.S.C. § 103(a) as unpatentable over Simms, Richard, and Rozenkranc.

The Invention

The invention relates to shaving cartridges for a razor. (Spec. 1:3-7.)
Claims 1 and 38 are independent. Claim 1 is reproduced below (App. Br.²
13 Claims App'x.):

1. A shaving cartridge for connection to a handle, the shaving cartridge comprising:

a plastic housing having a front portion, a rear portion, two side surfaces extending from the front portion to the rear portion, pivoting structure defining a pivot axis for pivoting of the housing with respect to the handle, and a housing axis extending from the rear portion to the front portion perpendicular to the pivot axis, the rear portion having a rear surface; one or more shaving blades between the front portion and the rear portion, the one or more blades extending along respective one or more parallel blade axes that are parallel to the pivot axis and located behind the pivot axis; and

a guard at the front portion of the housing including an elastomeric member that extends along the housing axis in front of the pivot axis by a front distance that is equal to, or not more than 45 percent less than, a rear distance along the housing axis from the pivot axis to the rear surface, so as to provide a cartridge that is substantially balanced about the pivot axis.

B. ISSUES

1. Did the Examiner incorrectly find that Simms discloses a shaving cartridge having a pivot axis positioned so as to establish the ratio of front and rear distances with respect to the axis that is required by claims 1 and 38?

² References to “App. Br.” in this opinion are to the Appeal Brief titled “Supplemental Appeal Brief” filed July 11, 2007.

2. Did the Examiner incorrectly determine that the ratio of front and rear distances set forth in claims 1 and 38 would have been obvious in view of the teachings of Simms and Richard?

3. Did the Examiner incorrectly determine that a cartridge which is removably connected to a handle would have been obvious in view of the teachings of Simms and Richard?

C. PRINCIPLES OF LAW

Anticipation is established only when a single prior art reference discloses all elements of the claimed invention. *In re Spada*, 911 F.2d 705, 708 (Fed. Cir. 1990).

The initial burden is on the examiner to establish a prima facie basis to reject the claims. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

A prior art reference must be considered for everything it teaches by way of technology and is not limited to the particular invention it is describing and attempting to protect. *EWP Corp. v. Reliance Universal Inc.*, 755 F.2d 898, 907 (Fed. Cir. 1985).

D. FINDINGS AND ANALYSIS

The Examiner rejected: (1) claims 1 and 38 as anticipated by Simms; (2) claims 1-8, 38-45, and 50 over Simms and Richard; (3) claims 9, 12-15, 46, and 47 over Simms, Richard, and Apprille; (4) claims 10 and 16 over Simms, Richard, Apprille, and Andrews; (5) claim 11 over Simms, Richard, Apprille, and Gilder; and (6) claims 17, 18, 48, and 49 over Simms, Richard, and Rozenkranc.

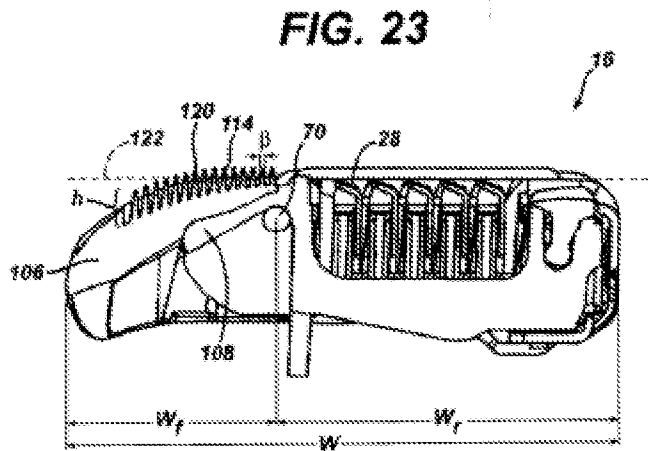
Anticipation

Claims 1 and 38 are drawn, respectively, to a shaving cartridge and a razor including a shaving cartridge. Each claim requires that the shaving cartridge include a housing and a guard at a front portion of the housing. But for minor variation in punctuation, claims 1 and 38 include the same recitation of the guard. That recitation as it appears in claim 1 reads (App. Br. 13 Claims App'x.):

a guard at the front portion of the housing including an elastomeric member that extends along the housing axis in front of the pivot axis by a front distance that is equal to, or not more than 45 percent less than, a rear distance along the housing axis from the pivot axis to the rear surface, so as to provide a cartridge that is substantially balanced about the pivot axis.

Thus, the claims require a guard with an elastomeric member which extends in front of a pivot axis. The dispute centers on the particular distance extended, namely that the elastomeric member extends in front of the pivot axis “by a front distance that is equal to, or not more than 45 percent less than, a rear distance along the housing axis from the pivot axis to the rear surface[.]” Gillette’s Figure 23 illustrates an embodiment of a shaving cartridge including an elastomeric member which corresponds to the requirements of the claims.

Figure 23 is reproduced below:



The figure above depicts a shaving cartridge according to Gillette's invention

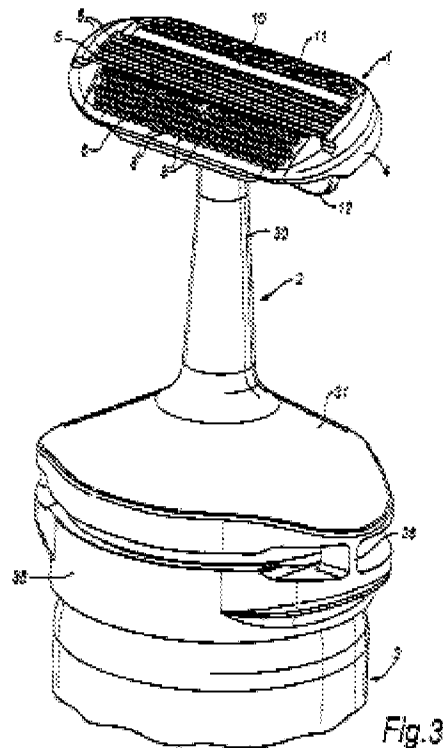
As described in Gillette's specification, a shaving cartridge with blade unit 16 includes a guard having an elastomeric member 100 (not numbered in the figure above) with a leading edge portion 106. (Spec. 13:18-21.) The elastomeric member extends from the front of the cartridge to a pivot axis 70 located in front of blades 28. (*Id.* at 18:3-6.) The distance that the elastomeric member extends is designated in the figure above as " W_f ". The rear portion of the cartridge which includes blades 28 extends from pivot axis 70 to a rear surface of the cartridge a distance designated " W_r ". The claims require that the distance W_f be "equal to, or not more than 45 percent less than" the distance W_r . As set forth in the claims, that dimensional relationship provides a cartridge that is substantially balanced about the pivot axis.

The Examiner found that Simms discloses all the features of claims 1 and 38. With respect to the pertinent feature discussed above involving the relationship of W_f to W_r , the Examiner stated (Ans. 3:16-18):

Simms further generally teaches a ratio between the front and rear portions as the front portion appears to be within 45 percent of the length of the rear portion (see Figure 3).

Simms discloses a razor having a blade unit mounted for pivotal movement with respect to a blade unit carrying structure. (Simms Abstract.) The Examiner references Simms' Figure 3 as "generally teaching" the required front and rear dimensions in relation to a pivot point.

Simms' Figure 3 is reproduced below:

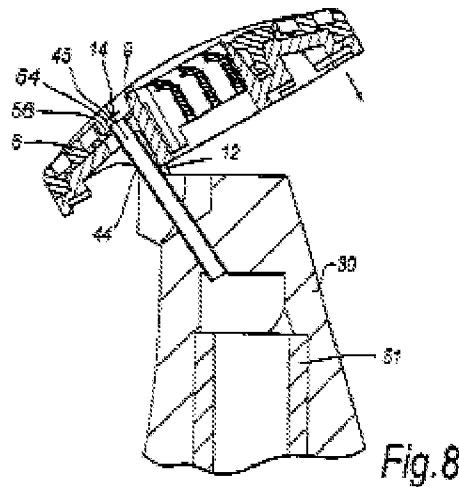


The figure above depicts an embodiment of Simms' invention

Figure 3 is a perspective view of a razor assembly showing a blade unit 1 attached to a carrying structure 2. Simms describes that blade unit 1 is mounted to carrying structure 2 so as to pivot about a pivot axis 14 (not labeled in the figure above). (*Id.* at 2:¶¶ 21-22.) It is not determinable,

however, from the view of the razor illustrated in Figure 3 what distance a front portion or a rear portion of the blade unit extends from the pivot axis. The Examiner does not meaningfully explain how that figure “generally teaches” the distance relationships required by Gillette’s claims.

Other of Simms’ figures illustrate a side view of the razor. Figure 8 is representative of the side view and is reproduced below:



The figure above depicts a partial side view of an embodiment of Simms’ razor

As shown in the figure above, blade unit 1 includes a front guard element 6 that extends to pivot axis 14 and a rear portion which extends from the pivot axis to a rear surface. (*Id.* at 3:¶ 0040.) However, neither that figure nor any other disclose any particular ratio for the distances from the front and rear of the blade unit to the pivot axis. According to Gillette, the razor shown in Figure 8 has “a front distance that is about 65 percent less than a rear distance” which is outside of the ratio required by its claims. (App. Br. 4:14-15.) We agree with Gillette to the extent that it is not clear how Simms’ figures, including Figure 8, illustrate a razor cartridge having a ratio of front and rear distances that falls within the required range.

Moreover, there is nothing in Simms' written description establishing any specific values for, or relationship of, the front and rear distances of a shaving cartridge from a pivot point.

Anticipation is established only when a single prior art reference discloses all elements of the claimed invention. *In re Spada*, 911 F.2d at 708. The initial burden is on the examiner to establish a prima facie basis to reject the claims. *In re Oetiker*, 977 F.2d at 1445. On this record, the Examiner has not met that burden as it is not clear where or how Simms taken alone discloses a member which "extends along the housing axis in front of the pivot axis by a front distance that is equal to, or not more than 45 percent less than, a rear distance along the housing axis from the pivot axis to the rear surface" as recited in claims 1 and 38.

We do not sustain the rejection of claims 1 and 38 as anticipated by Simms.

Obviousness

The Examiner rejected claims 1-8, 38-45, and 50 over Simms and Richard and claims 9-18 and 46-49 over those references taken with one or more of Apprille, Andrews, Gilder, and Rozenkranc. Claims 2-18 and 39-49 are ultimately dependent on, and argued collectively with, one of claims 1 and 38. The patentability of claim 50 is separately argued.

Claims 1-18 and 38-49

The same limitation in claims 1 and 38 that is discussed above in connection with the anticipation rejection involving Simms is at issue in the obviousness rejections based on Simms. In the context of the obviousness inquiry, the Examiner determined that Simms discloses all the limitations of

claims 1 and 38 with the exception of an elastomeric member which extends in front of the pivot axis “by a front distance that is equal to, or not more than 45 percent less than, a rear distance along the housing axis from the pivot axis to the rear surface[.]” To make up for the deficiency, the Examiner turned to the teachings of Richard.

Richard discloses a razor head having a blade package that moves in response to forces encountered during shaving. (Richard 1:42-47.) The razor includes a front guard element 80 and a rear cap 20. (*Id.* at 2:51-61; Figure 9.) Richard describes that the “proper balance” of shaving forces on each of the blades of the razor is a concern and is influenced by the position of the pivot axis along the razor head. (*Id.* at 4:1-3.) Richard explains that one preferable location for the pivot axis is as at a “mid-point between the cap and the guard element[.]” (*Id.* at 4:3-7.)

In light of the teachings of Richard, the Examiner reasoned that one with ordinary skill in the art would have appreciated that the position of a razor head’s pivot point, such as that of Simms, may be adjusted to obtain a desired balance of the shaving forces on the razor’s blades arising during a shaving act. The Examiner concluded that locating Simms’ pivot point within the range set forth in Gillette’s claims would have been obvious as involving only routine design considerations. (Ans. 10:4-10.)

Gillette challenges the Examiner’s conclusion, arguing that Simms “teaches away” from moving its pivot axis to the location proposed by the Examiner. (App. Br. 6:3-6.) As support for that assertion, Gillette contends that Simms limits the location of its pivot axis 14 to a point “at or very close to” a fluid discharge port 45, citing to Simms’ column 3, paragraph 27. (App. Br. 7:2-9.) Gillette further contends that that portion of Simms also

requires a “specific placement” of discharge port 45, and thus also pivot axis 14, which creates front and rear distances outside of what is required by its claims. (*Id.*) According to Gillette, the above-noted disclosures in Simms preclude any modification of the location of Simms’ pivot axis.

Gillette’s argument is misplaced. Simms’ column 3, paragraph 27 simply describes one embodiment of its invention. That a particular embodiment of Simms’ invention depicts one location for a pivot point does not limit Simms’ teachings to only that location. Rather, a prior art reference must be considered for everything it teaches by way of technology and is not limited to a particular described embodiment of its invention. *EWP Corp.*, 755 F.2d at 907. Simms’ description of one embodiment of its invention does not constitute a limiting scope of disclosure to one of ordinary skill in the art.

Moreover, contrary to Gillette’s assertion, the embodiment in Simms on which Gillette bases its “teaches away” argument does not require any single location for the pivot axis of Simms’ razor head. As described in Simms, discharge port 45 is positioned at or close to pivot axis 14 so as to supply fluid to a user’s skin. (Simms 3:¶ 0027.) That disclosure does not impose any restriction as to the placement of the pivot axis. Rather, the pivot axis is first positioned at a desired location which allows blade unit 1 to pivot about a user’s skin contours during shaving and then the discharge port is placed at or near the pivot axis’ location so as to not impede the blade unit’s pivoting capability. (*Id.*) Thus, it is the position of the pivot axis which dictates the location of the discharge port rather than the converse as urged by Gillette.

Furthermore, Simms' column 3, paragraph 27 simply describes that discharge port 45 is located "adjacent" a backstop element 9 of the blade unit which is located in a forward position with respect to blades 5 of the unit. (*Id.*; Fig. 7.) The term "adjacent" does not mandate any particular placement of discharge port 45. The discharge port may be adjacent to or near the backstop in a variety of locations within the razor head and is not limited to any one particular location. That disclosure is inconsistent with Gillette's assertion that Simms limits the placement of its discharge port, and by extension its pivot point, to one "specific" location.

For the foregoing reasons, we reject Gillette's argument Simms teaches away from any adjustment or relocation of the position of the pivoting axis of its blade unit.

Simms discloses that its blade unit pivots so as to follow a user's skin contours during shaving. (Simms 3: ¶ 0027.) Richard teaches that the position of the pivoting axis of a razor's blade unit is variable along the unit and is selected so as to maintain proper balance of shaving forces on the blades of the unit. (Richard 3:65-4:21.) A person of ordinary skill in the art is also one of ordinary creativity. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007). Such a hypothetical person would have readily appreciated that a particular blade unit, such as that of Simms, can benefit from positioning its pivot axis in a way to balance shaving forces on the blades, as is taught in Richard. The Examiner is correct that the particular ratio claimed is a matter of routine optimization, because the location of the pivot axis has been recognized as a result-effective variable for balancing shaving forces. *See In re Boesch*, 617 F.2d 272, 276, USPQ 215, 219 (CCPA 1980)

(discovery of an optimum value of a result effective variable in a known process is ordinarily within the skill of the art.).

Moreover, Gillette does not allege that the position of the pivot axis set forth in its claims provides unexpected results or is otherwise critical, much less point to any supporting objective evidence of any unexpected results or criticality. On this record, Gillette has not shown that the Examiner was incorrect in determining that one with ordinary skill in the art would have appreciated from the teachings of Simms and Richard that a pivoting axis of a shaving cartridge may be positioned as required by claims 1 and 38.

We sustain the rejection of claims 1 and 38 as unpatentable over Simms and Richard. The patentability of claims 2-18 and 39-49 is not argued apart from claims 1 and 38. We also sustain the rejections of claims 2-18 and 39-49.

Claim 50

Claim 50 is dependent on claim 38 and adds the feature that the “cartridge is removably connected to the handle.” (App. Br. 18 Claims App’x.) The Examiner rejected claim 50 over Simms and Richard. Gillette generally contends that the above-quoted feature distinguishes its claim 50 over the teachings of Simms and Richard.

We reject Gillette’s contention. Simms discloses that its blade unit 1 “may be detachable from the carrying structure with the intention that the blade unit 1 be replaced on the carrying structure when the blades have become blunted.” (Simms 4:¶ 0042.) That is a disclosure that Simms’ blade unit, *i.e.*, a cartridge, is removably connected to its carrying structure, *i.e.*, a handle.

We sustain the rejection of claim 50 over Simms and Richard.

E. CONCLUSION

1. The Examiner incorrectly found that Simms discloses a shaving cartridge having a pivot axis positioned so as to establish the ratio of front and rear distances with respect to the axis that is required by claims 1 and 38.

2. The Examiner did not incorrectly determine that the ratio of front and rear distances set forth in claims 1 and 38 would have been obvious in view of the teachings of Simms and Richard.

3. The Examiner did not incorrectly determine that a cartridge which is removably connected to a handle would have been obvious in view of the teachings of Simms and Richard.

F. ORDER

The rejection of claims 1 and 38 under 35 U.S.C. § 102(b) as anticipated by Simms is reversed.

The rejection of claims 1-8, 38-45, and 50 under 35 U.S.C. § 103(a) as unpatentable over Simms and Richard is affirmed.

The Examiner rejection of claims 9, 12-15, 46, and 47 under 35 U.S.C. § 103(a) as unpatentable over Simms, Richard, and Apprille is affirmed.

The rejection of claims 10 and 16 under 35 U.S.C. § 103(a) as unpatentable over Simms, Richard, Apprille, and Andrews is affirmed.

The rejection of claim 11 under 35 U.S.C. § 103(a) as unpatentable over Simms, Richard, Apprille, and Gilder is affirmed.

Appeal 2009-010017
Application 10/799,938

The Examiner rejection of claims 17, 18, 48, and 49 under 35 U.S.C. § 103(a) as unpatentable over Simms, Richard, and Rozenkranc is affirmed.

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

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